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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/02/2007

Herbert Wehler

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SMITH LAW OFFICE

8000 EXCELSIOR DRIVE, SUITE 301

MADISON, WI 53717

EXAMINER

JONES, DAVID B

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

01/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,865	Applicant(s) WEHLER ET AL.	
	Examiner David B. Jones	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-19, 22, and 24 is/are rejected.
- 7) ☒ Claim(s) 6, 20 and 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/31/2008</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. The abstract of the disclosure is objected to because it fails to be set forth on a clean and separate sheet. Correction is required. See MPEP § 608.01(b).
2. The title of the invention is not descriptive. The title is awkward and confusing. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the details to the elements 1, 4, 5-7, and 16 as described in the specification. No numeral 1 can be found in the Figures. Numeral 4 (see Figures 1 and 2) simply has an arrow removed from the device pointing generally toward many structures. In Figure 4 numeral 4 points toward a box structure at the top of the figure. Numeral 5 points, in Figures 1 and 2, to some unclear structure. In Figure 3 numeral 5 points toward a vertical wall and it is unclear what makes for a locking means. Numeral 6 is said to be a torsional member yet in Figure 1 it points to what can best be said two vertical walls and in Figure 4 it looks like numeral 6 point to a thin wall on the upper side of the structure shown. Numeral 7 is shown in Figure 4 only and is simply an arrow pointing toward the structure in the figure. No clear receptacle is shown. Numeral 16 is said to point to a stop in the specification yet no stop can be seen in Figure 1. These and other structures are unclear in the drawings and render the invention indefinite and unclear. It is not clear from the drawings structure enabling one of ordinary skill in the art the ability to make or use the invention.

Further the “torque rod” of claims 6 and 23 is not shown in the claims. Further the “plurality of additional chain links” of claims 13-20 are not shown in the drawings. Yet further the “pivoting axis receptacle” of claims 8 and 19 has not been shown in the drawings. In claim 11, the “means for substantially limiting the fixing means from pivoting” has not been shown in the figures. In claim 15, the “locking piece receptacle” has not been shown in the figures. The particular “locking means” of claim 22 has not been clearly shown in the drawings.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing, MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

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informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The disclosure is objected to because of the following informalities: Positive recitations of claims (see pages 2 and 6) in the specification render the specification improper if not indefinite. The claims can be ever changing, cancelled, or different than what was originally filed and hence recitations of the claims in the specification render the specification improper. Direct recitations in the specification should be deleted. Further the specification appears to be a product of translation from a foreign document and as such contains many recitations that are indefinite and unclear. Review of the specification and appropriate correction is required.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See the objections to the drawing supra for instances that are unclear in the specification as to the structure being claimed in the claims. The specification and drawings should be amended to make clear the structure being claimed in order to allow one of ordinary skill in the art to make or use the invention.

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6. Claims 2, 8, 15, 16, 18, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 2, "the direction of an outer wall" lacks antecedent basis. In claim 8, "the pivoting axis receptacle" lacks antecedent basis. Further in claim 8, "a pivoting axis" lacks positive recitation in the combination. In claim 15, "a locking piece receptacle" has not been positively recited in the combination. In claim 24 it is unclear which locking means provides antecedent basis, the locking means of claim 1 or that of claim 22 which appear to be different structure.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-19, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehmann et al. '330. Ehmann teaches (see Figures 1 and 7) the claimed invention including a link plate 10 or 12, a fixing means generally at 40, a transverse link 14, a locking means 42/45/46, a lock piece receptacle at 38, a torsional element 36 (see column 3, lines 58-60), an outer wall of the link plate 10 being at 8' and an inner wall of the link plate at 8, a receptacle 22 for the fixing means 40, and a tool access region at 22.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehmann et al. '330. Ehmann teaches the claimed invention, as treated supra, excepting that the fixing means and link plates being made of separate members. Whether separate or made integral, as shown in Ehmann, would have rendered no new or unobvious result and would have been found obvious to one of ordinary skill in the art at the time of the invention. To make a part separate or integral is but an obvious choice of machine expedients accomplishing the same result. It is held that forming something of one piece or two pieces accomplishing the same result only involves routine skill in the art (see Howard v. Detroit Stove Works, 150 U.S. 164 (1893)).

9. Claims 6, 20, and 23 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

10. Claim 24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Jones whose telephone number is 571 272 4518.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Banks Derris, can be reached at 571 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David B. Jones/
Primary Examiner
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